

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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: **ORDER**  
IN RE SEPTEMBER 11 LITIGATION :  
: 21 MC 97 (AKH)  
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ALVIN K. HELLERSTEIN, UNITED STATES DISTRICT JUDGE:

The parties appeared before me on March 17, 2004 to show cause why plaintiffs, who had claims pending in the Victim Compensation Fund (VCF), as listed on Appendix A attached to my Order of March 1, 2004, should be granted more time to dismiss their cases. Based on the representations of counsel for these plaintiffs and information provided by the VCF, and for the reasons stated on the record of that date, I hereby Order the following:

A. Cases or plaintiffs listed immediately below shall be dismissed as having elected to pursue claims with the VCF and thereby waiving “the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001,” except for actions for collateral sources or against a knowing participant to the terrorist acts. See The Air Transportation Safety and System Stabilization Act 49 U.S.C. § 40101, Title IV Victim Compensation, § 405(c)(3)(B), Pub. L. No. 107-42, 115 Stat. 230, 240 (Sept. 22, 2001), as amended by Pub. L. No. 107-71, § 201, 115 Stat. 597, 645 (Nov. 19, 2001) (the Act):

1. 02 Civ. 07031 O’Callaghan v. NYC
2. 02 Civ. 07032 Wilkinson v. PANYNJ
3. 02 Civ. 06363 Bolourchi v. United Airlines, Inc., et al.
4. 02 Civ. 07185 Schroeder v. American Airlines, et al.
5. 02 Civ. 10054 Regan v. PANYNJ
6. 03 Civ. 00194 Wilkinson v. NYC
7. 03 Civ. 00195 O’Callaghan v. NYC

8. 03 Civ. 05139 Cuccinello v. AMR Corp., et al.
9. 03 Civ. 07043 Grosshandels, et al. v. WTC Properties, et al.  
as to plaintiffs: Katja Tatjana Bothe and Costanze Menzel
10. 03 Civ. 07051 Fiedelberg, et al. v. UAL Corp., et al.  
as to plaintiffs:  
  
Steven Feidelberg  
Kathleen Lozier  
Meredith Anne Fry  
Meg Glasser  
Jay Michelstein  
Helene Passaro  
Midori Takahashi  
Gregory Stevens
11. 03 Civ. 07064 Regan v. United Airlines, Inc., et al.
12. 03 Civ. 06968 Wilson, et al. v. American Airlines, Inc., et al.  
as to plaintiff: Beth Ann Faragher
13. 03 Civ. 07022 Kovalcin, et al. v. AMR Corp., et al.  
as to plaintiffs:  
  
Carol Waldie  
Elizabeth Kovalcin  
Michelle Lancaster

B. The following cases or plaintiffs were incorrectly identified on Appendix A to my March 1, 2004 Order as having claims before the VCF; these cases may proceed in their normal course as active cases:

1. 02 Civ. 01727 Sweeney v. United Airlines, Inc., et al.
2. 02 Civ. 07145 Falkenberg v. AMR Corp., et al.
3. 03 Civ. 06863 Gabrielle v. UAL Corp., et al.

C. Plaintiffs listed immediately below had filed claims with the VCF but withdrew such claims in favor of litigation. These cases shall remain active subject to defendants'

motions to dismiss. Defendants' counsel will propose a briefing schedule for motions to dismiss based on waiver by March 24, 2004. Separate motions shall be filed for each case with a common brief and common affidavits, unless a case specific brief or affidavit is required. Discovery for such motions shall be limited to documents. The parties may petition the court for leave to depose individuals if required once document discovery is complete.

1.      02 Civ. 06362      Snyder v. United Airlines, Inc., et al.  
Incomplete VCF Claim Withdrawn (1/15/04 Letter)
  
2.      02 Civ. 07231      Welsh, et al. v. PANYNJ  
As to plaintiff:  
Amy Nacke - Incomplete VCF Claim  
Withdrawn (2/27/04 Letter)
  
3.      03 Civ. 06966      Cordero, et al. v. AMR Corp., et al.  
As to plaintiffs:  
Christine Fisher - Incomplete VCF Claim  
Withdrawn (1/21/04 Letter)  
Irene Golinski - Incomplete VCF Claim  
Withdrawn (1/21/04 Letter)  
Julia Shontere - Incomplete VCF Claim  
Withdrawn (1/21/04 Letter)  
Shirley Willcher - Incomplete VCF Claim  
Withdrawn (1/21/04 Letter)
  
4.      03 Civ. 06968      Wilson, et al. v. American Airlines, Inc., et al.  
As to plaintiff:  
Ann Louise Wilson - Incomplete VCF Claim  
Withdrawn (1/22/04 Letter)

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| 5. | 03 Civ. 07018 | <p>Burlingame, et al. v. AMR Corp., et al.</p> <p>As to plaintiffs:</p> <p>Rosemary Dillard - Incomplete VCF Claim<br/>Withdrawn (2/27/04 Letter)</p> <p>Cynthia Droz - Incomplete VCF Claim<br/>Withdrawn (2/27/04 Letter)</p> <p>Amy Newton - Incomplete VCF Claim<br/>Withdrawn (2/27/04 Letter)</p> <p>Geoffrey Judge - Incomplete VCF Claim<br/>Withdrawn (3/8/04 Letter)</p> |
| 6. | 03 Civ. 07019 | <p>Nacke v. AMR Corp., et al.</p> <p>As to plaintiff:</p> <p>Amy Nacke - Incomplete VCF Claim<br/>Withdrawn (2/27/04 Letter)</p>                                                                                                                                                                                                                                                   |
| 7. | 03 Civ. 7022  | <p>Kovalcin, et al. v. AMR Corp. et al.</p> <p>As to plaintiff:</p> <p>Suzanne Mladenik - Incomplete VCF Claim<br/>Withdrawn (1/22/04 Letter)</p>                                                                                                                                                                                                                                  |

D. The following three cases concern individuals on whose behalf another family member has filed a claim with the VCF. These cases shall remain active subject to defendants' motions to dismiss. The briefing schedule defendants' counsel submit on March 24, 2004 shall also apply to any motions based on waiver that defendants file concerning these cases.

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|----|------------------------|------------|
| 1. | Pocasangre v. UAL Corp | 02 Cv 7152 |
| 2. | Tempesta v. AMR        | 02 Cv 7244 |
| 3. | Tempesta v. PANYNJ     | 03 Cv 7134 |

E. Plaintiffs in the following cases are German insurance companies who allege subrogation claims for insureds who died in the September 11th attacks. Personal representatives for such insureds have filed claims in the VCF, raising an issue of whether the right to file suit has been waived. Plaintiffs' counsel shall submit contentions and supporting documentation to defendants liaison

counsel by April 2, 2004 as to their rights to sue. Defendants who then wish to bring a motion to dismiss shall describe any discovery they believe to be necessary, and a briefing schedule.

1. 03 Civ. 07043 Grosshandels and Berufsgenossenschaft v. World Trade Center Properties, et al.
2. 04 Civ. 1382 Verwaltungsberufsgenossenschaft v. World Trade Center Properties, et al.
3. 04 Civ. 1912 Bundesversicherungsanstalt v. World Trade Center Properties, et al.

SO ORDERED.

Dated: New York, New York  
March 18, 2004

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//S//  
ALVIN K. HELLERSTEIN  
United States District Judge